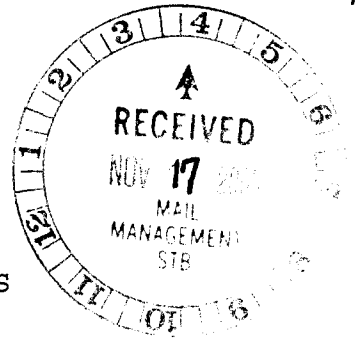


200436

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB Ex Parte No. 582 (Sub-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES



COMMENTS OF MAYO FOUNDATION d/b/a MAYO CLINIC

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DATED: November 17, 2000

ORIGINAL

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INTRODUCTION

By decision served October 3, 2000 (October 3, Decision), the Board initiated this Notice of Proposed Rulemaking (NPRM) proceeding. If adopted, the proposed rules would represent the first major revision of the Board's Railroad Consolidation Rules, 49 C.F.R. Part 1180 et seq. since they were last changed as a result of the 1980 Staggers Rail Act amendments to the former Interstate Commerce Act. The NPRM sets November 17, 2000, as the deadline for initial comments by interested parties, with reply and rebuttal comments due December 18, 2000, and January 2001, respectively. The NPRM indicates that the Board will issue its revised final regulations by June 11, 2001.

Mayo Foundation ("Mayo") submits these initial comments in response to the Board's request.

BACKGROUND

Mayo concentrates all of its interests and resources on protection and advancement of human life by providing the best possible patient and family care at extensive facilities located in Rochester, MN and elsewhere throughout the country. Mayo interest in this proceeding arises out of its participation in

the DM&E construction case.¹ The specific problem in that proceeding is the Wyoming extension would dramatically change a grain hauling regional carrier with modest traffic and frequency levels (presently 3 trains daily through Rochester) into an incessant round-the-clock presence expected to involve 37 trains per day through the heart of Rochester and in close proximity to Mayo facilities. The issues being addressed in these proceedings are very much the same as those that are facing Mayo and others in the DM&E proceeding.

A summary of Mayo previously expressed concerns appears in Appendix T pages 347 and 348 of the Board's Decision initiating this proceeding served October 3, 2000 (October 3 Decision). As outlined in that summary Mayo is very much concerned that the STB must look much more closely at the emergency service and public safety ramifications of merger and construction proposals especially in light of the adverse experience of communities and public agencies in the wake of recent Conrail proceeding.² In addition Mayo urged the Board to expand the rulemaking proceeding to encompass railroad construction projects under 49 U.S.C. 10901 and to expand coverage of proposed rules in STB Ex Parte No. 574 concerning Development of Safety Integration Plans to include construction

¹ Finance Docket No. 33407 Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River.

² STB Finance Docket No. 33388 CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY - CONTROL AND OPERATING LEASES/AGREEMENTS - CONRAIL INC. AND CONSOLIDATED CORPORATION.

proposals under 49 U.S.C. 10901.

Mayo believes that the Board's proposed rules would substantially raise the bar merger applicants must clear to obtain merger approval. However, they do not adequately address the concerns raised by communities and others which have been or will be adversely affected by merger (or construction) proposals. Mayo recognizes that the Board proposes to require applicants "to submit evidence about potentially blocked grade crossings as a result of merger related traffic increases."³ While this is a step in the right direction, Mayo believes that it falls far short of addressing the very serious concerns that have been raised by responsible public agencies and communities that are dealing with adverse safety and environmental impacts from recent railroad mergers.

Specifically, the U.S. Department of Transportation ("DOT") maintains that the UP/SP and CSX/NS/CR transactions have demonstrated that STB's current procedures do not address many of the adverse community and environmental impacts of a consolidation. Mayo submits that criticism holds equally true in construction cases. These concerns have been documented by previous submissions in the State of Ohio⁴ and adversely affected the city of Cleveland.⁵ As a result DOT has urged STB to

³ Proposed § 1180.1 (f) (2).

⁴ October 3 Decision, Appendix H, p. 219-221.

⁵ October 3 Decision, Appendix H p. 225-227.

consider new approaches and to explore options to address merger related environmental impacts including areas which significantly impact communities even though they do not meet current threshold levels⁶. Mayo strongly concurs in DOT's assessment and urges STB to expand much needed changes to include construction proposals under 49 U.S.C. 10901.

It is also noted that Kansas Agencies have emphasized the importance that STB adopt regulations that will assure significant weight will be given to local opinion and that conditions can be imposed to meet specific local concerns.⁷ Mayo strongly supports the need for affirmative steps in this proceeding to assure that vital community concerns are fully considered and adequately addressed with appropriate conditions.

Mayo also agrees with the serious reservations raised by the California Public Utilities Commission in regard to rail carriers with accident records above industry average or otherwise deemed unacceptable.⁸ Mayo urges STB to specify that approval of applications involving a carrier with an adverse safety record be withheld unless the Board is satisfied on the basis of clear and convincing evidence that safety performance will be raised to fully acceptable levels. That same requirement should be extended to construction applications since safety is every bit as much a concern in such proceedings.

⁶ October 3, Decision, Appendix G p. 202.

⁷ October 3 Decision, Appendix H, p. 209.

⁸ October 3 Decision, Appendix H, p. 207.

Still another key community impact and environmental impact issue common to both rail merger and construction cases involves essential mitigation or avoidance issues and who should pay for these measures. In the case of DM&E construction it is the railroad and its customers (distant electric utility companies which stand to benefit materially from proposed extension of the railroad. Yet Mayo and its surrounding community are faced for paying a very high price for that project in the form of paying for mitigating the substantial impacts which will adversely affect Mayo and Rochester. Where applicant carrier(s) stand to benefit materially from a proposal that portends substantial burdens on communities, Mayo urges that the proposed regulations should provide the cost of mitigating such burdens be allocated accordingly.

CONCLUSION

Mayo and the high quality of health services it provides have grown to a state of considerable renown in no small measure because of the quality of life within the City of Rochester. The peaceful environment is conducive to treatment and healing that is vitally important to the thousands of patients and their families who rely on Mayo. The immediate threat to the quality of that environment in the form of the DM&E construction proposal necessitated Mayo involvement in that proceeding and motivated its participation in rulemaking proceeding.

Mayo urges the Board to pay heed to the voices of communities and public agencies which are grappling with serious problems as a result of environmental and safety problems associated with recent railroad mergers and consolidations lest the serious problems of the recent past be repeated.

Mayo further urges the Board to commit sufficient resources and time to identify and provide for adequate mitigation or avoidance of public safety and environmental problems in the public interest.

Finally, Mayo renews its urgent requests that (1) the Board expand the scope of their rulemaking to encompass railroad construction proposals under 49 U.S.C. 10901 and, (2) the Board reconsider and extend coverage of the proposed rules in STB Ex Parte No. 574 to include construction proposals in view of the overriding importance of public health and safety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", is written over the typed name.

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Mayo Clinic

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 17th day of November, 2000, served a copy of the forgoing on all known parties of record by first class U.S. Mail postage prepaid.

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", written over a horizontal line.

Keith G. O'Brien